

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:08CV31-01-MU

ROBERT WAYNE SMITH,

Plaintiff,

v.

MATTHEW W. PENNELL, et al.,

Defendants.

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ORDER

THIS MATTER comes before the Court for an initial review of Plaintiff's Complaint pursuant to 42 U.S.C. § 1983, filed April 22, 2008.

In his Complaint Plaintiff alleges that he was incorrectly charged and convicted of attempting to escape from Alexander Correctional Institution. Plaintiff admits that he informed a staff psychiatrist that if he was not moved to a more comfortable housing area he was either going to hit an officer or touch the fence so he could be put in lock up. It was as a result of this statement that Plaintiff was convicted of the A06 charge. Plaintiff asserts in his Complaint that he was wrongly convicted of this violation as his conduct does not constitute a violation of A06.

Plaintiff's allegation simply does not state a constitutional claim. That is, a mere disagreement of the application of a prison regulation to a set of apparently uncontested facts, without more,¹ does not rise to the level of a constitutional violation so as to involve a federal court.

¹ The Court notes that Plaintiff makes no allegation that his due process rights were violated. Indeed, Plaintiff does not complain about the disciplinary process itself other than the fact that he does not think the prison regulation was properly applied to the facts of his case.

To hold otherwise would result in this Court sitting as an automatic appeals court for prison discipline cases.

IT IS THEREFORE ORDERED that Plaintiff's Complaint is **DISMISSED**.

Signed: April 28, 2008

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

